

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1172
By: Howard et al. (Zaffirini)
Criminal Justice
5/19/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas lawmakers have made significant investments in recent years to improve criminal justice experiences for survivors of sexual assault in the form of better testing and tracking of rape kits and expanded access to health care in the immediate aftermath of an assault. Despite these investments, survivors report that the process of engaging in the criminal justice system remains retraumatizing and difficult. Many have indicated that they fear reporting their assault to law enforcement and not being believed. Expanding sexual assault survivors' rights during engagement with law enforcement would help protect their dignity and increase the likelihood that survivors will stay engaged with the criminal justice process. H.B. 1172 would improve the survivor experience by guaranteeing that sexual assault victims have the right to an advocate's presence during law enforcement interviews, prohibiting the use of polygraphs on victims, and ensuring that law enforcement officers cannot decline to request a forensic medical examination for a sexual assault reported within the applicable period.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 1172 amends current law relating to the rights of victims of sexual assault or other prohibited sexual conduct.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Article 15.051, Code of Criminal Procedure, as follows:

Art. 15.051. POLYGRAPH EXAMINATION OF COMPLAINANT PROHIBITED.

SECTION 2. Amends Article 15.051(a), Code of Criminal Procedure, read as follows:

(a) Prohibits a peace officer or an attorney representing the state from requiring, requesting, or taking a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency with a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 25.02 (Prohibited Sexual Conduct), Penal Code.

SECTION 3. Amends Article 56A.251(a), Code of Criminal Procedure, to conform to Section 3, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and to further amend it as follows:

(a) Requires the law enforcement agency, if a sexual assault is reported to the law enforcement agency within 120 hours, rather than 96 hours, after the assault, with the consent of the victim of the alleged assault, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, to request a forensic medical examination of the victim for use in the investigation or prosecution of the offense. Deletes existing text creating an exception under Subsection (b) (relating to a law enforcement agency declining to request a forensic medical examination).

SECTION 4. Amends the heading to Subchapter H, Chapter 56A, Code of Criminal Procedure, to read as follows:

SUBCHAPTER H. PRESENCE OF ADVOCATE OR REPRESENTATIVE DURING
FORENSIC MEDICAL EXAMINATION OR LAW ENFORCEMENT INTERVIEW

SECTION 5. Amends Subchapter H, Chapter 56A, Code of Criminal Procedure, by adding Article 56A.3515 as follows:

Art. 56A.3515. PRESENCE OF SEXUAL ASSAULT PROGRAM ADVOCATE OR OTHER VICTIM'S REPRESENTATIVE DURING LAW ENFORCEMENT INTERVIEW. (a) Requires the peace officer conducting the interview, before conducting an investigative interview with a victim reporting a sexual assault, other than a victim who is a minor as defined by Section 101.003 (Child or Minor; Adult), Family Code, to offer the victim the opportunity to have an advocate from a sexual assault program, as defined by Section 420.003 (Definitions), Government Code, be present with the victim during the interview, if the advocate is available at the time of the interview. Requires the advocate to have completed a sexual assault training program described by Section 420.011(b) (relating to the minimum standards for the certification of a sexual assault training program and the renewal of that certification), Government Code.

(b) Requires the peace officer conducting the interview, if an advocate described by Subsection (a) is not available at the time of the interview, to offer the victim the opportunity to have a crime victim liaison from the law enforcement agency, a peace officer who has completed a sexual assault training program described by Section 420.011(b), Government Code, or a victim's assistance counselor from a state or local agency or other entity be present with the victim during the interview.

(b-1) Requires the peace officer conducting an investigative interview described by Subsection (a) to make a good faith effort to comply with Subsections (a) and (b), except that the officer's compliance with those subsections may not unreasonably delay or otherwise impede the interview process.

(c) Authorizes an advocate, liaison, officer, or counselor authorized to be present during an interview under this article to only provide the victim reporting the sexual assault with:

(1) counseling and other support services; and

(2) information regarding the rights of crime victims under Subchapter B (Crime Victims' Rights).

(d) Prohibits the advocate, liaison, officer, or counselor and the sexual assault program or other entity providing the advocate, liaison, officer, or counselor from delaying or otherwise impeding the interview process.

(e) Requires a sexual assault program providing an advocate under Subsection (a) to pay all costs associated with providing the advocate. Requires an entity providing a victim's assistance counselor under Subsection (b) to pay all costs associated with providing the counselor.

(f) Provides that a peace officer or law enforcement agency that provides an advocate, liaison, officer, or counselor with access to a victim reporting a sexual assault is not subject to civil or criminal liability for providing that access.

SECTION 6. Amends Article 56A.352, Code of Criminal Procedure, by amending Subsections (b) and (d) and adding Subsection (b-1), as follows:

(b) Requires a penal institution, if a victim alleging to have sustained injuries as the victim of a sexual assault was confined in the penal institution at the time of the alleged assault, to provide, at the victim's request, a representative to be present with the victim:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) during an investigative interview conducted by a peace officer in relation to the investigation of the alleged assault.

(b-1) Creates this subsection from existing text and makes a conforming change.

(d) Prohibits a representative from delaying or otherwise impeding:

(1) creates this subdivision from existing text and makes a conforming change; or

(2) the interview process.

SECTION 7. Repealer: Article 15.051(b) (relating to requiring a peace officer or attorney representing the state to inform the complainant that the polygraph examination is not required and that the complaint is prohibited from being dismissed for certain reasons), Code of Criminal Procedure.

Repealer: Article 15.051(c) (relating to prohibiting a peace officer or attorney representing the state from taking a polygraph examination unless certain conditions are met), Code of Criminal Procedure.

Repealer: Article 56A.251(b) (relating to certain conditions under which a law enforcement agency is authorized to decline to request a forensic medical examination), Code of Criminal Procedure.

SECTION 8. Provides that this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, to the extent of any conflict, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. Effective date: September 1, 2021.